

supplication, meins himself to the Lords; deduces the dispute; then shows he cannot produce the said decret, the same being a common evident to Boynd, Bamff, and himself, and so either in Boynd's hands, or at least in the auditor's to whom it was given up. The Lords ordained Boynd's procurators to see this bill, and to answer; who gave in the answer following:—That the desire of the foresaid bill was most unjust, to crave a term to prove that all intromissions before 1637 were discharged seeing that is not the thing Boynd now insists on, but on the three particulars before mentioned. *Item*, Airley proponing the same defence before the Lord auditor; it being answered that it was not *ad idem*, the auditor most justly found that the foresaid decret arbitral and discharge did not comprehend these articles now acclaimed; yet being ordained to produce the same, they so failyied therein that the term was five or six times conditionally circumduced against them; so that it were most unjust now, after fourteen years' dependence, to stop Boynd's decret, on pretence of the said decret arbitral, which they of purpose have kept up because they know it will not be the article insisted on.

Which answer the Lords having considered, they adhered to their former interlocutor; and ordained the decret to be extracted, unless the Lord Strathurd should see cause to delay the same, or to discharge the clerk for that effect. Whereupon Jo. Ogilvie, (I take it to have been Jean D'Orleans,) gives in a new supplication, shewing that the Lords have approved a report made in the English time, which was allenarly before answer, and wherein all Airley's defences were reserved to him; that Airley is very deadly sick; his son, the Lord Ogilvie, is at London; his advocate has no information; therefore for a time entreats the Lords would forbear to advise the said report.

Notwithstanding of which supplication, the Lords ordained the decret to be extracted, superseding execution thereon till December 1665; and if betwixt and then the decret arbitral alleged upon be produced, then the Lords ordain Airley to have suspension of this decret without caution or consignation.

*Act.* Sir Peter Wedderburne, Mr. Jo. Cunningham, Pat. Fraser. *Alt.* Sir Thomas Wallace, Sir George Lockhart, Mr. David Falconer.

*Signet MS. No. 47, fol. 53.*

*February 4, 1665.*

THOMAS FRASER'S DAUGHTERS *against* RENTON of Lamberton.

IN 1650, the Earl of Hartfield, (now of Annandale,) Home of Plenderghast, Home of Blaisterton, and Renton of Lamberton, oblige them to pay to Thomas Fraser merchant in Edinburgh, 8000 merks. In 1656 he gets a decret against them for the same. His daughters, on this decret, charge Lamberton's son therefore. He suspends, *1mo*, Because he, being a minor, scarce yet fourteen years, must have the privilege of the law granted to minors; that is, that the letters must be suspended as to all execution against his person, that he be not hindered in his education at schools and colleges during his minority. *2do*, The suspender and his *correi debendi* have taken the benefit of the act of debtor and creditor; and, conform thereto, have paid the chargers a year's annualrent

of the said principal sum, whereof also they have granted discharge; which they refer to the charger's oath. *3tio*, Its eiked in the margin, that the decret, whereon the said discharge did proceed, is null, in so far as the same was given without any manner of probation; there being only a registrate bond produced, which was registrate after his father's decease, and no summons of registration raised against him. *Item*, That his father was but a cautioner in the said bond. In respect of all which the letters must be suspended without all caution or consignation to be made by the suspender; at least as to personal execution.

At the calling of it, to the first it was ANSWERED,—That, being a reason of suspension, is not instantly verified. To the second, repeats the same. As to the third, ought to be repelled, because the said decret yet stands unreduced. *Item*, that the suspender's father was not a cautioner, but a principal debtor. *Igitur*, the suspender, whether major or minor, must be liable to the chargers for the sum charged for.

The Lords repelled the reasons of the suspension, in respect of the answers made thereto: only, if the suspender should produce any thing to instruct him or his co-debtors to have taken the benefit of the act of debtor and creditor, then he was to be farther heard thereanent, and the decret to be stopped. Which he failyieing to do, the Lords adhered to their former interlocutor, and found the letters orderly proceeded, ay and while the suspender and his curators should pay the sum charged for.

*Susp.* Mr. Roger Hog. *Alt.* Mr. Alexander Oswald.

*Signet MS. No. 48, folio 55.*

1665. *February 4.* Sir ALEXANDER BURNET of Leys, *against* Sir JAMES BAIRD of Auchmedden.

SIR ALEXANDER BURNET of Leys charges Gordon of Park, Gordon of Cluny, and others, as having obliged themselves by bond, in 1660, to pay to him sundry chalders of bear, sundry chalders of meal, sundry silver duties, with caynes and poultry, and that during all the days of William Couttes sometime of Auchterfoulls his lifetime. Sir James Baird of Auchmedden arrests the same victual and others in Park's hands, for some sums of money addebted to him by William Couttes. Park suspends on double poinding. *Item*, if Leys should be found to have better right of the two thereto, suspends on thir reasons: *Imo*, That there being legal debates anent the lands of Clunie, betwixt Gordon of Park and Couttes of Auchterfoull, the same were submitted to the Lord Brodie and others, who decerned Auchterfoull to dis-pone the whole rights of the lands of Cluny in favours of Park; ordained Park, for Couttes his better livelihood, to make yearly payment to him of the victual and duties charged for by Leys; for which having granted a bond blank, in the creditors' name, Leys gets his name filled up therein; whereas the same was allenarly granted to Auchterfoull's behoof, who, by disposition at the same time, obliged himself to warrant the lands of Cluny to Park, (who grants this bond now charged on,) from his own facts and deeds. Notwithstanding whereof he has granted a